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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MAX VERA,

Plaintiff and Appellant,

v.

CENTURY 21 MASTERS REALTY et al.,

Defendants and Respondents.

B203936

(Los Angeles County
Super. Ct. No. BC 361501)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Kenneth R. Freeman, Judge. Reversed with directions.

Bahar Law Office and Sarvenaz Bahar for Plaintiff and Appellant.

Jeffrey L. Melczer for Defendant and Respondent Century 21 Masters Realty.

Ernster Law Offices and Ryan K. Marden for Defendant and Respondent Stewart
Title Guaranty Company.

Plaintiff Max Vera, appearing in propria persona, brought this action against Stewart Title of California (Stewart Title) and Century 21 Masters Realty (Century 21) alleging that they participated in a scheme in which his home was sold without his knowledge or consent through the use of a forged deed. The trial court sustained defendants' demurrers without leave to amend and entered judgment for defendants. We reverse.

BACKGROUND AND PROCEEDINGS BELOW

We describe the background of this case based on Vera's pleadings, the requests for judicial notice on appeal filed by Stewart Title and representations by Vera's appellate counsel.¹

In 1995, Vera's aunt, Guadalupe Sotelo, deeded property in Highland Park to Vera and his mother, Victorina Sotelo. Victorina Sotelo died in 2007, leaving Vera the sole owner of the property.

In September 2006, Maurice Vivanco, claiming to act on behalf of Guadalupe Sotelo (who no longer owned the property) sold the property to Yariv Feldman. Century 21 represented Feldman in the purchase. Stewart Title issued a policy of title insurance to Feldman. After the transaction closed, it was discovered that the seller's documents, including Sotelo's signature on the grant deed, had been forged. As the result of a settlement between Feldman and Stewart Title, Feldman purported to deed the property to Stewart Title in return for an unknown sum of money. Stewart Title refused to return the property to Vera unless he paid approximately \$40,000 in fees and expenses Stewart Title allegedly incurred in the transaction.

In October 2008, the Stewart Title Guaranty Company quitclaimed the property to Vera. Prior to that, Vera spent two years living in his car because he was denied title, access and use of his property.

¹ Vera is represented on appeal by Sarvenaz Behar through the Appellate Pro Bono Project of the Second District Court of Appeal.

Vera filed this action in propria persona against Stewart Title, Century 21 and other defendants allegedly involved in the scheme to take his property. The trial court sustained the demurrers of Stewart Title and Century 21 without leave to amend and ordered the case dismissed as to them. Vera filed a timely appeal as to these defendants.²

DISCUSSION

I. VERA’S CAUSES OF ACTION AGAINST STEWART TITLE OF CALIFORNIA

A. Stewart Title’s Claim That It Is Not A Proper Defendant

Stewart Title demurred to Vera’s first amended complaint on the grounds that it was uncertain and failed to state a cause of action for fraud because it did not allege what statements were made by Stewart Title, whether the statements were false, who the statements were made to, when they were made, and what damages they caused. Stewart Title now argues for the first time on appeal that it is not a proper defendant because Stewart Title Guaranty Company, a separate corporation, ended up holding title to the property and deeding the property back to Vera. In support of this argument Stewart Title asks us to take judicial notice of a deed recorded in October 2008 in which Stewart Title Guaranty Company quitclaimed the Highland Park property to Vera. We grant Stewart Title’s request for judicial notice. On our own motion, we also take judicial notice that “Stewart Title Guaranty Company and Stewart Title of California are wholly owned subsidiaries of Stewart Information Services Corp.” (<[http://www.stewart.com/press release/stewart 174-continues](http://www.stewart.com/press%20release/stewart%20174-continues)> [as of 06/09/2009].) (Evid. Code § 452, subd. (h).) The relationship between Stewart Title and Stewart Title Guaranty Company and its relevance to this case can be determined through discovery. Contrary to the argument by Stewart Title, the deed from Stewart Title Guaranty Company to Vera does *not* establish as a matter of law that Stewart Title “never had title to the subject property.” Nor does

² The court also sustained demurrers without leave to amend and entered judgment in favor of Provident Title and Viva Escrow. Vera did not timely appeal from the judgment in favor of these defendants and we will dismiss the appeal as to them.

that deed bear on any of the elements of Vera's cause of action against Stewart Title for slander of title.

B. Cause of Action for Slander of Title

When a case comes to us on appeal from the sustaining of a demurrer without leave to amend we may affirm only if the complaint fails to state a cause of action under any possible legal theory and there is no "reasonable possibility that the defect can be cured by amendment." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) It is well settled that in determining whether a complaint can be amended to state a cause of action an appellate court may accept the representations of plaintiff's counsel as to the legal theory or state of facts which plaintiff would add by way of amendment. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386, 1387–1388.) The proposed amendments need not have been offered in the trial court. (Code Civ. Proc., § 472c, subd. (a).)

It appears reasonably possible that the complaint can be amended to state a cause of action against Stewart Title for slander of title. The elements of a cause of action for slander of title are (1) publication, (2) falsity (3) absence of justification, and (4) direct pecuniary loss. (*Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263–264.) Stewart Title allegedly published the purported deed from Sotelo to Feldman by recording it. The deed falsely represented that Sotelo was the owner of the property and that she granted it to Feldman. Lack of justification can be pleaded based on Title's knowledge that an earlier grant deed vested title in Vera. Lastly, at a minimum, Vera suffered pecuniary loss from the expenses he incurred in regaining title to his property. Because there is a reasonable possibility that plaintiff can amend his complaint to state at least one cause of action, we need not discuss other potential causes of action.

II. VERA'S CAUSES OF ACTION AGAINST CENTURY 21

On appeal Century 21 does not contend that it did not owe a duty to Vera. Rather, its only contention is that Vera should not be given an opportunity to amend his complaint. As we discussed above, we reject that position. Because of Century 21's

limited opposition, we do not have the benefit of its views on duty. Nonetheless, we consider whether it appears reasonably possible that the complaint can be amended to state a cause of action against Century 21 for negligence. We conclude that Vera should be given an opportunity to amend his complaint.

A real estate broker may owe a duty of care to third persons involved in a transaction even if the broker does not have privity with, or fiduciary duties to, the third person. (2 Miller & Starr, Cal. Real Estate (3d ed. 2000) Agency, § 3:45, pp. 267–268 and cases cited therein.) Whether a party owes a duty of care to a third person in any particular situation is determined by considering the criteria established by our Supreme Court in *J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 42.) Those criteria are “(1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant’s conduct and the injury suffered, (5) the moral blame attached to the defendant’s conduct and (6) the policy of preventing future harm.” (*J'Aire v. Gregory, supra*, 24 Cal.3d at p. 804.)

Based on the undisputed facts, the allegations in the existing complaint and the representation of facts presented by plaintiff’s counsel, plaintiff may be able to plead a duty of care. Here, the transaction was intended to affect the owner of the property who, at the time of the sale, was Vera not Sotelo. Century 21 could reasonably foresee harm to the owner of property if it permitted a person to falsely claim to represent the owner and sell the property. It is reasonably certain that a person whose home is fraudulently transferred would suffer injury from the unauthorized sale of his property. Likewise, plaintiff has alleged that he suffered injury; he was deprived of the ability to live in his property for two years. There is a close connection between Century 21’s failure to investigate Vivanco’s authority and Vera’s injuries. Had Century 21 investigated Vivanco’s claim that he represented Sotelo it would have discovered the fraud. Given that Century 21 personnel knew neither Vivanco nor Sotelo, were aware of irregularities

in the sale documentation, that the sale was apparently considerably below market value, the temporal proximity of Century's representing Feldman both as the buyer of the property and then as the seller, at a greatly increased price, plaintiff may reasonably be able to plead that Century 21 choose to ignore the danger signs that a fraud was being committed in expectation of pecuniary benefit from the transactions. Such conduct, if it took place, deserves moral blame.

Based on the undisputed facts, the allegations of the existing complaint, and representations by counsel for plaintiff, it appears reasonably possible that plaintiff will be able to plead a cause of action for negligence against Century 21. As with regard to claims against Stewart Title, we need not discuss other potential causes of action.

DISPOSITION

The judgment is reversed as to Century 21 Masters Realty and Stewart Title of California and the cause is remanded to the trial court with directions to afford the plaintiff an opportunity to amend his complaint as to those defendants. Plaintiff is awarded his costs on appeal as to Century 21 and Stewart Title.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

FERNS, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.